

For:
Introduction: 12/5/22
Adoption: 2/6/23
Effective: 2/27/23 (upon expiration of 20 calendar days following approval by the Mayor or passage by the council over his veto by 4/5ths of the whole Council)

THE TOWN OF MOUNT AIRY, MARYLAND

ORDINANCE NO. 2022-35

AN ORDINANCE TO AMEND PART II OF THE TOWN CODE ENTITLED "GENERAL LEGISLATION", CHAPTER 109 ENTITLED "WATER", ARTICLE I ENTITLED "WATER SERVICE", SECTION 109-4 ENTITLED "WELLS", SECTION 109-19.2 ENTITLED "CALCULATION OF TOWN'S AVAILABLE CAPACITY YIELD", ARTICLE V ENTITLED "WELLHEAD PROTECTION", SECTION 109-33 ENTITLED "PROHIBITED USES"; CHAPTER 110 ENTITLED "WATER RESOURCE MANAGEMENT", SECTION 110-1 ENTITLED "ADOPTION OF COUNTY PROVISIONS", SECTION 110-2 ENTITLED "AMENDMENT OF COUNTY PROVISIONS", THE ADOPTION OF A NEW SECTION 110-3 WHICH SHALL BE TITLED "CONFLICTING PROVISIONS – STRICTER PROVISIONS TO CONTROL" AND CURRENT SECTION 110-3 ENTITLED "ENFORCEMENT" AND REENACTING AND RENUMBERING SAME AS SECTION 110-4 ENTITLED "ENFORCEMENT" WITHOUT SUBSTANTIVE CHANGE, FOR THE PURPOSES OF UPDATING CARROLL COUNTY CODE REFERENCES, TO SET MINIMUM STANDARDS FOR DEDICATION AND ACCEPTANCE OF WATER SUPPLY WELLS BY THE TOWN, AND TO ENACT OTHER MEASURES FOR WELLHEAD AND WATER RESOURCE PROTECTION AND SAFETY

WHEREAS, the Town Council is charged with ensuring an adequate supply of water that is safe to drink and for daily activities by its residents and businesses; and

WHEREAS, to ensure the residents of the Town an adequate water supply of water as the Town develops; and

WHEREAS, the Town desires to reduce any impacts that climate change may have upon the water supply for the Town; and

WHEREAS, some of the Town Code provisions cross reference outdated citations to the Carroll County Code, which should be corrected; and

WHEREAS, the Mayor and Town Council have determined it to be in the best interests of the Town to enact and put into Town Code the measures that follow in order establish minimum standards for dedication and acceptance by the Town of water supply wells, and wellhead and water resource protection and safety, and to update Town Code references to the Carroll County Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF MOUNT AIRY:

Section 1: That Part II, Chapter 109, Article I of the Code of the Town of Mount Airy be and is hereby amended to repeal and reenact with amendments Sections 109.4 and 109-19.2 as follows:

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§ 109-4. Wells.

- A. Whenever water connection is provided for a property previously served by a well, the well shall be examined to determine whether it is polluted or will be a menace to health. Should such well be found to be polluted or a menace to health, it shall be abandoned and closed in a manner satisfactory to the Building Inspector.
- B. No well for household use shall be constructed on a property accessible to a public water main.
- C. No water supply well may be dedicated to and accepted by the Town unless the well has been proven to yield at least 75,000 gallons per day (GPD) as determined by a thirty (30) consecutive day well test, or its equivalent as designed or approved by the Town Engineer.

* * *

§ 109-19.2. Calculation of Town's available capacity yield.

- A. The method of calculating the Town's available water capacity yield and available sewer capacity yield shall be established from time to time by resolution of the Town Council upon recommendation of the Town Engineer and the Town's Water and Sewer Commission. This method shall be published on the Town's web page and shall be otherwise available upon request to Town staff. The method of calculating the Town's available capacity yield shall take into consideration and set aside capacity for existing development to which Town water and sewer service is already supplied, pipeline development, water and sewer system capacity including treatment capacity, pumping capacity, storage, distribution system requirements, power supply, maintenance and operations, system losses, limitations placed on the use of new water resources in source agreements, other obligations of or limitations on the Town to supply water and/or sewer capacity by means of annexation agreement or other contract and a safety factor of ~~42~~ 20% required by the Town's Adequate Public Facilities Ordinance ("APFO"). § 25-65A.

* * *

Section 2: That Part II, Chapter 109, Article V of the Code of the Town of Mount Airy be and is hereby amended to repeal and reenact with amendments Sections 109-33 as follows:

§ 109-33. Prohibited uses.

The following uses are prohibited unless allowed as conditional uses under § 109-34:

- A. Bulk storage of hazardous materials, except the following:
 - (1) Materials needed for normal household use, outdoor maintenance and hearing of a structure;
 - (2) Waste oil retention facilities required by statute, rule or regulation;
 - (3) Materials needed for emergency generators; or

- (4) Materials used in water treatment plans.
- B. Junkyards.
 - C. Metal plating establishments.
 - D. Open burning sites and dumps.
 - E. Quarries and mining operations.
 - F. Sanitary landfills and rubble fills.
 - G. Uses which involve, as a principal activity, the manufacture, storage, use, transport or disposal of hazardous materials.
 - H. Uses which involve hazardous materials in quantities greater than those associated with normal household use.
 - I. Underground pipelines carrying hazardous materials other than as permitted by the State of Maryland or in interstate commerce.
 - J. Any improvement, construction, or development, including paving, within a 200-foot radius or 400-foot diameter of any wellhead.
 - K. Any water supply well that would share a wellhead protection area with another existing water supply well.

Section 3: That Part II, Chapter 110 of the Code of the Town of Mount Airy is hereby amended to repeal and reenact with amendments Sections 110-1, 110-2 and 110-3, and enactment of new Section 110-4 as follows:

§ 110-1. Adoption of county provisions.

The Carroll County Water Resource Management Ordinance, known as Chapter ~~218~~ 154 of the Carroll County Code of Public Local Laws and Ordinances, adopted by the County Commissioners of Carroll County, including all amendments thereto, shall be automatically the Town of Mount Airy Water Resource Management Ordinance without the necessity of further action on the part of the Town of Mount Airy except as delineated below.

§ 110-2. Amendment of county provisions.

Section ~~218-2~~ 154.02 of the Carroll County Water Resource Management Ordinance, known as Chapter ~~218~~ 154 of the Carroll County Code of Public Local Laws and Ordinances, shall be amended for application within the Town of Mount Airy to provide that the following term shall mean:

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COUNTY

The Board of Commissioners of Carroll County, and the Town Council of the Town of Mount Airy, or its designee.

§ 110-3. ~~Enforcement~~ Conflicting provisions – stricter provisions apply.

~~The Mayor of the Town of Mount Airy is hereby authorized to enter into agreement with the County Commissioners of Carroll County, a body corporate and politic, with respect to enforcement of the Water Resource Management Ordinance hereby adopted.~~

In the event of a conflict between the Town Code and the Carroll County Water Resource Management Ordinance, known as Chapter 154 of the Carroll County Code of Public Local Laws and Ordinances, and/or the Carroll County Water Resource Management Manual, the stricter provision shall apply.

§ 110-4. Enforcement.

The Mayor of the Town of Mount Airy is hereby authorized to enter into agreement with the County Commissioners of Carroll County, a body corporate and politic, with respect to enforcement of the Water Resource Management Ordinance hereby adopted.

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that this Ordinance shall take effect on the 27th day of February, 2023 (upon expiration of 20 calendar days following approval by the Mayor or passage by the council over his veto by 4/5ths of the whole Council).

Introduced the 5th day of December, 2022.

Enacted this 6th day of February, 2023 by a vote of _____ in favor and _____ opposed.

ATTEST:

Pamela Reed, Secretary

Jason Poirier
President of the Town Council

Approved this 6th day of February, 2023.

ATTEST:

Pamela Reed, Secretary

Larry Hushour, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.
This 6th day of February, 2023.

Thomas V. McCarron, Town Attorney

Colleen Reilly

From: Barney Quinn <bquinn@mountairymd.gov>
Sent: Monday, December 5, 2022 2:21 PM
To: Karl Munder; dt4060@msn.com
Cc: Jason Poirier
Subject: [EXTERNAL] RE: Ordinance 2022-35 - see what you think
Attachments: B2941087.PDF

Karl,

I am copying Jason as the Water & Sewer liaison for this information. I am okay with the proposed changes with the following two recommendations:

1. Revise Section 109-4.C. to the following: "No water supply well or group of two wells may be dedicated to and accepted by the Town unless the wells each have proven to yield at least 50,000 gallons per day (GPD) and a combined yield of not less than 75,000 gallons per day (GPD) as determined by a minimum thirty (30) consecutive day well test, or its equivalent, as designed or approved by the Town Engineer."
2. Do not alter Section 109-19.2.A. or the Town's ability to approve small business improvements or commercial changes in use may be extremely impacted. The Town's water use while reserving already approved development (pipeline projects) is now exceeding the 80% capacity. Based on the December 31, 2021 5-year water use average of 667,872 and adding the pipeline projects of 99,126, the net water use divided by the total average day appropriation of 927,000 gpd places the Town at 82.7% committed of its total capacity. The 80% restriction will bring things to a halt, including someone already in Town wanting to better their business and would have to wait or leave Town otherwise. Staff worked hard to get us away from that type of restriction we had years ago.

Let me know if you have any questions.

Thanks,
Barney

From: Karl Munder <councilmembermunder@mountairymd.gov>
Sent: Sunday, December 4, 2022 9:36 PM
To: Barney Quinn <bquinn@mountairymd.gov>; dt4060@msn.com
Subject: FW: Ordinance 2022-35 - see what you think

Hey,

This ordinance is being introduced during the council meeting tomorrow, and Tom suggested running this by you two for thoughts pertaining to the portion that requires the town to keep 20 % of its allotted water from the state in reserve for use during drought. See his notes on this and how it relates to the APFO also. Open to thoughts and suggestions. There is one correction under "Prohibited Acts" and that is to add the word "proposed" to (k) so no wells will share a zone of influence or wellhead protection area.

Karl

From: McCarron, Tom <TMcCarron@semmes.com>
Sent: Sunday, December 4, 2022 10:17 AM

To: Karl Munder <councilmembermunder@mountairymd.gov>

Subject: Ordinance 2022-35 - see what you think

I do suggest running some of these provisions by Barney, Dick and/or the Water and Sewer Commission. One issue is going to a 20% reserve. That has been the definition of "adequate" under the APFO in Chapter 25. But we also have a category called "approaching inadequate", and that is where the 12% reserve contained in Chapter 109 comes from in calculating the yield. So, if we reserve 20%, is there a need for this middle category of "approaching inadequate" is my only issue.

Thomas V. McCarron

Principal

25 South Charles Street, Ste 1400, Baltimore, MD 21201

Tel: 410-576-4854 | Fax: 410-539-5223 | Mobile: 410-960-6743

tmccarron@semmes.com

<https://www.semmes.com>



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MEMORANDUM

Date: December 20, 2022

To: Mayor Larry Hushour, Council President Jason Poirier, Secretary Pamela Reed. Council Members Karl Munder, Lynn Galletti and Stephen Domotor.

CC: Town Administrator David Warrington, Town Engineer Barney Quinn

Subject: Mount Airy Town Council Request for Comments on Ordinance 2022-35 – Proposed Amendments to Chapter 109 and Chapter 110 of the Mount Airy Code

At the December 7, 2022 meeting, the Water & Sewer Commission reviewed Ordinance 2022-35 for the purpose of providing comments and recommendations to the Town Council relating to proposed amendments to Chapters 109 (Water) and 110 (Water Resource Management) of the Mount Airy Code. At the December 7, 2022 meeting, the Commission unanimously approved the following comments and recommendations for the Town Council.

Section 109-4. Wells.

Section 109-4.A. & B. - No comments or recommendations.

Section 109-4.C. Establishes a new requirement that a well or wells can not be dedicated or accepted by the Town unless the well(s) yields at least 75,000 gallons per day (GPD).

The Commission recommends that Section 109-4.C be removed. The proposed yield requirement of 75,000 GPD could severely limit the Town's ability to bring additional production wells on-line. For example; if the proposed yield requirement were in place when Town wells 1-4 (combined MDE permitted GPD of approximately 65,000 GPD per well) and well 5 (MDE permitted GDP of 43,000 GPD) came on-line, Code would have prohibited the Town from accepting these wells. Any reconsideration of this or similar requirements should be supported with evidence demonstrating the need to require a minimum yield giving consideration to the risk associated with setting a minimum yield.

Section 109-19.2 Calculation of Town's available capacity yield.

The Commission recommends not changing Section 109-19.2.A "safety factor" from 12% to 20%. The Commission calculated the impact of increasing the safety factor using its standard formula and the Town Engineer's updated numbers. The Commission determined that an eight percentage point increase in the safety factor would stop all (100%) development and redevelopment within the Town limits including all residential, commercial and industrial. The Commission believes that a complete cessation of all development and redevelopment is not in the best interest of the Town and its citizens. We, therefore, concur with the Town Engineer's conclusion that "(T)he 80% restriction will bring things to a halt, including someone already in Town wanting to better their business ... Staff worked hard to get us away from that type of restriction we had years ago."

The Commission determined that even a moderate increase in the safety factor would cause a complete halt to development and redevelopment.

Further, the Commission strongly recommends that any consideration of changing the criteria for determining available water for the Planning Commission's allocation to various zoning/development categories be assessed in conjunction with the APFO requirements which are an integral part of the process to determine available water and sewer for the Town. Raising the 12% safety factor in Section 109-19.2 requires, in the Commission's opinion, that the 12% (expressed as exceeding 88% of overall system capacity) in Section 25-6 also be reviewed whenever considering amendments to Section 109-19.2.

Section 109-33.A.(1) & (4).

Section A(1): The word "hearing" appears incorrect. Should it be "heating"?

Section A(4): The word "plans" appears incorrect. Should it be "plants"?

Section 109-33.J & K.

Section 109-33.J establishes a 200 foot radius or 400 foot diameter buffer at any wellhead. The 400 foot diameter is redundant and could be removed. The Commission notes that this section is more restrictive than the Carroll County Water Resource Management Manual Section Part IV. (Management Standards and design criteria) paragraph B.1 (Community Water Supply Development) requirement of a 200 foot by 200 foot buffer. The Commission further notes, however, that the Town may establish a more stringent requirement at its own discretion.

Section 109-33.K is a new requirement. The Commission noted that Carroll County does not have a requirement that no wellhead can share a wellhead protection area with another water supply well. This requirement, if adopted, could prevent the Town from bringing a production well on line simply because a potentially proven well site happens to be in a wellhead protection area with an already existing well. This Section could limit the Town's ability to meet future water needs while failing to provide any significant benefit to the Town. The Commission further notes, however, that the Town may establish additional requirements beyond the requirements of Carroll County at its own discretion.

Respectfully,